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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/669,087

09/25/2000

Carl P Pearson

3364

30621

7590

06/02/2004

JENSEN + PUNTIGAM, P.S.

SUITE 1020

2033 6TH AVE

SEATTLE, WA 98121

EXAMINER

HOTALING, JOHN M

ART UNIT

PAPER NUMBER

.3713

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/669,087

Applicant(s)

PEARSON, CARL P

Examiner

John M Hotaling II

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peppel US Patent 6,200,216 in view of Sehr US Patent 6,325,292 and Pearson et al US Patent 5,411,259. The rejection contained in the previous office actions are maintained and incorporated herein. The amended subject matter relative to downloaded information from the trading cards to carry out the game was previously disclosed by the combination of references above. Specifically, Peppel discloses the use of paper and electronic trading cards for use in digital format where a user of the system can make, trade and use the trading cards over electronic medium including the Internet. Columns 5-8 disclose the cards are used, what types of media the cards are able to used on, that the cards are *media and platform independent*, all of the specifics of on-line trading and

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posting of cards, distribution of cards. Peppel discloses that the cards are stored and accessed in various media, including on-line media, physical media and paper media (column 5) and that various schemes are employed to ensure scarcity and use of the trading cards such as built in copy protection, authenticity and compatibility with the consumer on line services (columns 12-13). In an analogous invention to Sehr which is a collector card service with a multi-directional communication link to allow the *exchange of data/information between and among the system entities including the cardholder via the internet or any other commercial available network technology.* Column 1 and in multiple instances throughout Sehr it is discloses that computer programs are utilized to perform house-keeping assignments, computing and decision functions, application-specific routines, *and the communications/ networking tasks necessary for the system's operation and card usage.* These programs further include security means such as cryptographic schemes, digital signatures and authenticity codes, to protect the system, cardholders and card contents against fraudulent use. Pearson discloses that it is well known to use a trading card with readable card information thereon in accordance with a software program in order to play a game. Pearson discloses that the trading card element will have located thereon all of the desired performance data in machine readable form such as bar code, magnetic, optical, or other form. Additionally, *Pearson discloses that it should be understood that the invention is not limited to a data format and that the performance data could be stored in memory with the card element having a corresponding access number for the player on the card for the stored data.* Peppel, Sehr, and Pearson are of analogous art

in that they are all related to the use and security of trading cards for games and entertainment. One of ordinary skill in the art would be motivated to combine the references in that Peppel column 2 that states that his system is for disassociated consumer multimedia, i.e. consumer multimedia products that allow customers to browse, create, collect, and exchange as well as play games (primary activity of the cards, Peppel column 10) with disassociated pieces of multimedia data since the data is media and platform independent (Peppel column 5). It would be obvious to one of ordinary skill in the art to combine Peppel with the security and authentication programs of Sehr and the media structure of Pearson using the motivation provided above.

### ***Response to Arguments***

2. Applicant's arguments filed 3/4/04 have been fully considered but they are not persuasive.

Applicant argues two points: First, that Peppel in combination with Sehr and Pearson does not teach downloaded information in combination with the information on a trading card to carry out the game, Second the combination of references does not teach the right to use their selected trading cards in the playing of the selected video games.

In response to the applicant's arguments, the examiner would note that the rejection is based on a combination of the references. Peppel teaches the use of trading cards for games with information on the trading card to be combined with and effect the game. Sehr teaches media and platform independence. This means that

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ones a trading card has been entered into the system for a game the information associated with that trading card is used in the game. The method of information transfer (platform independence) from the card to the game, from the card to the computer (internet server) with a lookup number then to the game the information on the card is used for the game is taught by the combination of references. With respect to the teaching of the right to use the trading card in the game column 1 and in multiple instances throughout Sehr it is discloses that computer programs are utilized to perform house-keeping assignments, computing and decision functions, application-specific routines, and the communications/ networking tasks necessary for the system's operation and **card usage**. These programs further include security means such as cryptographic schemes, digital signatures and authenticity codes, to protect the system, cardholders and card contents against fraudulent use. With respect to the applicants argument specifically to the right to use the card for a particular game please see all the computer program features above. It would be obvious to one of ordinary skill using the information above to see that if a player input a card for a POKEMON game and the player was playing Magic the Gathering that the computer system would know that the POKEMON card could not be used. Throughout the disclosure of Sehr there is disclosed that the computer programs perform the necessary functions including the communication/ networking tasks necessary for the systems operations and card usage 1:35-49, 2:45-52, 4:10-27, 5:35-40 rights, 5:44-47 internet, 7:5-30 use rights, 12:1-7 authentication.

With respect to the applicants arguments relative to claim 23 and the combination of the elements into a stand alone system please see Sehr 5:50-63. Collector cards can further include PC (Personal Computer) card formats, handheld terminals or any pocket-sized computer configurations. This definition includes cell phones. Furthermore, in a stand-alone system the components do not have to be in one "box" they can be separately attached like a personal computer.

With respect to the applicants assertion that the claim element of claim 12, namely replica cards, has not been treated please see multiple instances throughout the disclosure of Pepple of a copy of the ETC. It is well known in both the computer world and the paper trading card world not to use the original in order to not damage it.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

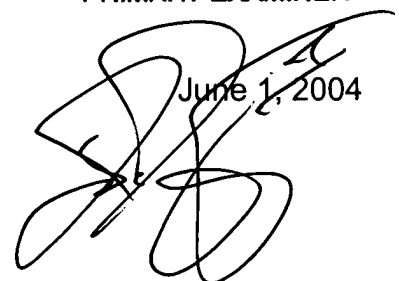
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M Hotaling II whose telephone number is 703 305 0780. The examiner can normally be reached on Mon-Thurs 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JOHN M. HOTALING, II**  
**PRIMARY EXAMINER**



June 1, 2004